



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Miami Wall Systems, Inc.--Claim for Costs

File: B-227072.2

Date: July 15, 1987

DIGEST

Where a procuring agency takes the corrective action requested by the protester and the General Accounting Office (GAO) consequently dismisses the protest as academic, there is no decision on the merits by GAO and, therefore, no basis on which claimed protest costs may be recovered.

DECISION

Miami Wall Systems, Inc., requests that it be paid the costs associated with the filing of its protest, B-227072, which we dismissed as academic. We deny the claim for costs.

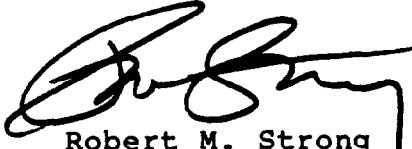
On April 29, 1987, Miami protested the rejection of its bid by the Veterans Administration (VA) under invitation for bids (IFB) No. 556-50-87, issued for the procurement of equipment, labor and materials to replace windows in two buildings. By letter dated June 2, 1987, the VA notified our Office that it determined that Miami's bid was improperly rejected, and that Miami's bid would be accepted as responsive. Because the VA granted the relief requested by Miami in its protest, by notice dated June 3, our Office dismissed the protest as academic. 4 C.F.R. § 21.3(f) (1986).

Concerning Miami's claim for costs, it is an essential rule of our bid protest process that a protester's entitlement to costs only arises upon our determination that an agency's procurement actions were in violation of applicable statutes or regulations. See 31 U.S.C. § 3554(c)(1) (Supp. III 1985); 4 C.F.R. § 21.6(d) and (e); Global Fuels Limited, Corp., B-225665.2, Mar. 27, 1987, 87-1 C.P.D. ¶ 355. If our Office does not make such a determination, then a claim for costs is without foundation. Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 C.P.D. ¶ 396. Where, as here, a protest was properly dismissed as academic because the agency has taken corrective action which the protester

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does not challenge, there was no decision on the merits by our Office and thus no basis for award of costs. See Care Hospital Supply, Inc., B-226002, Mar. 2, 1987, 87-1 C.P.D. ¶ 237.

The claim for costs is denied.



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